

UNITED STATES DISTRICT COURT
DISTRICT OF VERMONT

ROBERT A. FORTUNATI, ADMINISTRATOR *
OF THE ESTATE OF JOSEPH FORTUNATI; *
ROBERT A. FORTUNATI and SUSAN *
FORTUNATI; and MARK FORTUNATI *

vs. *

Civil No.
1:07-cv-143

ANDREW CAMPAGNE, MARC THOMAS, JEREMY *
HILL, TODD PROTZMAN, ROB SNETSINGER, *
KARL GARDNER, HUGH O'DONNELL, *
MIKE DUDLEY & WALTER GOODELL *

D E P O S I T I O N

of

WALTER GOODELL

Taken on behalf of the Plaintiffs on
Wednesday, February 18, 2009, at the
Office of the Attorney General,
Montpelier, Vermont.

APPEARANCES:

GEORGE E. SPANEAS, ESQ., of the firm Clauson, Atwood &
Spaneas, 10 Buck Road, Hanover, New Hampshire, 03755,
appeared and represented the Plaintiffs.

DAVID R. GROFF, ESQ., of the Office of the Attorney
General, 109 State Street, Montpelier, Vermont,
05609-1001, appeared and represented the Defendants.

ALSO PRESENT: Susan Fortunati

COURT REPORTER: Lisa M. Hallstrom, RPR, CRR, CCP

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1 (Commencing at approximately 1:07 p.m.)

2 WALTER GOODELL: Being first duly sworn by a
3 Notary Public to tell the truth,
deposes and says as follows:

4 E X A M I N A T I O N

5 BY MR. SPANEAS:

6 Q Sir, could you just please state your name and
7 spell it so we have it for the record?

8 A Walter Goodell. W-A-L-T-E-R, G-O-O-D-E-L-L.

9 Q Okay. And, Mr. Goodell, as of June 24, 2006,
10 what was your position with the Vermont State Police?

11 A I was the B Troop commander, rank of captain.

12 Q Okay. And do you still hold that same position
13 today?

14 A No, sir, I do not.

15 Q What's your position -- how's your position
16 changed since June 24, '06?

17 A I have transferred into the assistant field force
18 commander's job, which is still a captain's rank, but
19 the duties are different.

20 Q Okay. What were your duties as of June 24, '06?

21 A As a troop commander I oversaw the operations
22 that occurred within B Troop's area, which encompassed
23 the Derby, St. Johnsbury, and Bradford barracks.

24 Q Okay. And now with your position what's your --
25 what's your job duties or responsibilities?

1 A Essentially I stand in for the major of the Field
2 Force Division, which means all of the uniform
3 troopers in Vermont, in the event that he's not
4 available or is out of state. I oversee the training
5 and deployment of all the Vermont State Police special
6 team assets. I oversee the operations in the four
7 communication centers around the state and a whole
8 host of other variety of tasks that I'd be happy to
9 talk about them if you want them but --

10 Q No, that's fine. So you were -- you did have a
11 position as a captain June 24, 2006?

12 A Yes.

13 Q Okay. What -- what are the ranks that are
14 superior to captain in the Vermont State Police? I
15 just want to know how high up in the rank you were.

16 A Sure. Major and colonel.

17 Q Those are the next two?

18 A Those are the remaining two, yes.

19 Q Okay. What did you do to prepare for today's
20 deposition?

21 A I reviewed my reports that were prepared, the ICS
22 forms, incident command forms. I reviewed the log of
23 events that I asked Sergeant Bruce Melendy to prepare
24 during the course of the incident. I looked at
25 newspaper articles that had been written at the time

1 A He -- he mentioned TSU after starting some
2 dialogue about the conver -- about the situation. And
3 we had a telephone conversation where I asked him a
4 series of questions in regards to specifics to make a
5 determination as to whether or not I was going to
6 specifically ask for TSU because he's making me aware
7 of the situation but within our -- our structure he
8 can't -- he can't make that happen. It's got to go
9 through a commanding officer. So he -- he mentioned
10 this might be a case that we might want to consider
11 TSU, and then we had additional dialogue where I asked
12 him a series of questions regarding the specifics of
13 the case in order to make a determination myself as to
14 whether or not I was going to contact the assistant
15 field force commander to seek permission for the use
16 of that resource in this case.

17 Q Okay. So you have -- you have the authority
18 to --

19 A Request.

20 Q -- request activating the TSU, and then if the
21 request is granted, you're in charge of the operation?

22 A Yes.

23 Q Okay. When Mr. Protzman called you -- so your
24 first conversation with Mr. Protzman about the matter
25 was over the phone on June 24, 2006, the matter being

1 Joseph Fortunati?

2 A Yes.

3 Q All right. And what information did he convey to
4 you over the phone?

5 A He gave me -- initially he gave me an overview of
6 the situation as it -- as it kind of evolved. He
7 talked about the previous encounters -- he told me
8 about the situation that had occurred that day first
9 in regards to Robert Fortunati and the interaction
10 between Robert Fortunati and the Vermont State Police
11 in regards to Robert's request for assistance because
12 of the situation that had involved Joseph earlier
13 where Joseph had pointed a firearm at their son when
14 they went out to visit him at this campsite. So he
15 spoke about that. He spoke -- when I inquired further
16 as to location -- we covered a variety of topics, but
17 we covered the location, where he was -- the proximity
18 of the location where the campsite was located. We
19 talked about the interaction that Mr. Fortunati --
20 Joseph Fortunati had prior to this day that seemed
21 to -- to start at one level where he had interaction
22 with somebody from the EPA and then it had seemed to
23 escalate up to the stage that it was at on this
24 particular day where there was obviously a
25 domestic-type situation involving other family members

1 that went there on his behalf to try to -- to try to
2 move him from that location to property that was owned
3 by the family, and then the subsequent scenario that
4 had unfolded where Mr. Fortunati ended up pushing his
5 son out of the way when Joseph pointed a handgun at
6 his head and made some comments to the effect that he
7 had him right between the eyes.

8 We started to discuss obviously the amount of
9 aggression that had been displayed by Joseph Fortunati
10 towards his family members, and then I did some
11 additional questioning with regards to the location
12 where this incident was occurring and whether or not
13 there was a potential for anybody else to happen to be
14 able to stumble into Mr. Fortunati where he was camped
15 knowing that he had already exhibited this behavior
16 earlier in the day to make a determination as to how
17 quickly we need to respond to this situation. So we
18 covered a large number of questions that I had
19 relative to the specific situation that this occurred
20 earlier in the day so that I could make an objective
21 decision about the next course of action and whether
22 or not I felt that the situation rose to the level of
23 requiring a Tactical Services Unit response for an
24 on-scene commander to manage it effectively to try to
25 ensure safety of the public, our troopers, and

1 Mr. Fortunati.

2 Q Okay. After the phone conversation on June 24
3 with Mr. Protzman, the initial phone conversation
4 where you were informed of Joseph -- the Joseph
5 Fortunati matter, did you make a decision with
6 Mr. Protzman over the phone that you were going to
7 request TSU or did you hang up the phone, process
8 information, do something else, and then at some other
9 time request TSU? Did you tell Mr. Protzman -- sorry
10 if I'm going fast -- or did you tell Mr. Protzman we
11 will activate or request TSU?

12 A I'm not sure exactly how that dialogue went, but
13 the next step in the chronology of events was that I
14 contacted Captain John Filipek, who's now the major,
15 and explained the situation to him and told him that
16 based upon what I knew about the situation and the
17 facts that I had been able to collect from Sergeant
18 Protzman, I felt very strongly that this was a case
19 where we did want to use the Tactical Services Unit to
20 respond to try to mitigate the situation.

21 Q So your next step was to contact Mr. Filipek?

22 A Yes.

23 Q And you conveyed information to Mr. Filipek
24 regarding this situation?

25 A Yes.

1 Q And did he say -- he gave you approval?

2 A Yes. After we reviewed all of the facts that I
3 explained to you earlier that Sergeant Protzman and I
4 had discussed, he granted the authorization of the use
5 of the Tactical Services Unit.

6 Q At the time that you requested the TSU team to be
7 activated, the only information or facts that you
8 heard were those that were conveyed by Mr. Protzman to
9 you, is that true?

10 A Yes, but he had additional facts from I believe
11 Trooper Amado who had conducted some investigation
12 regarding the events that had occurred in the days
13 leading up to this event which seemed to kind of
14 escalate from one point now up to the point that we
15 were at. I also was provided with information that
16 Mr. Fortunati had some type of a mental health
17 background and that there were some concerns in
18 regards to his mental health background as -- as to
19 his capacity to actually follow through on the threats
20 that he had made to his family members.

21 Q But that information was all -- whatever
22 information that was conveyed to you over the phone
23 was all from Mr. Protzman?

24 A Yes. Sergeant Protzman was the point of contact
25 that I had at the Bradford barracks that was providing

1 managed without the Tactical Services Unit. That's
2 the purpose of the level of scrutiny that we employ
3 within our organization is to make sure that these
4 types of decisions are not -- that they're vetted
5 at -- at multiple levels of the organization up to and
6 including the assistant field force commander so that
7 there is that level of scrutiny that occurs before
8 that trigger is flipped so that that resource can be
9 deployed.

10 Q How long did the phone conversation between you
11 and Mr. Protzman on June 24th, '06, regarding Joseph
12 Fortunati and the consideration of activating the TSU
13 take place?

14 A How long was it?

15 Q Yeah.

16 A I would say it was minutes.

17 Q Like minutes could be 58 minutes, 30 minutes, 20
18 minutes.

19 A Right. Again, it was not a very brief
20 conversation. It -- there was some length to it as
21 far as we were able to cover a lot of ground, but an
22 estimate, probably ten minutes. In that ballpark.
23 Maybe a little bit more, but in that ballpark.

24 Q And why did you agree -- you sort of told me
25 earlier, but let me just ask. Why did you deem it

1 appropriate to request TSU activation based on what
2 Mr. Protzman was telling you?

3 A Well, ultimately our responsibility is to
4 maintain the public safety. Beyond that we have a
5 responsibility to ensure the safety of our own people
6 and in this case even Mr. Fortunati. The way that our
7 resources are deployed, our personnel resources,
8 troopers that are on the road have access to certain
9 tools available to them on their belt that they can
10 use in high stress situations to try to mitigate those
11 situations. In this case looking at the volatility of
12 the situation, the clear potential for violence, the
13 violence that had already occurred, the events that
14 seemed to be escalating each time that we encountered
15 Mr. Fortunati or that -- that we had any type of a
16 behavioral pattern that was developing had risen now
17 to a level where he had access to a firearm and was
18 threatening to use it on his own family members, the
19 background that I had from Sergeant Protzman about him
20 having a mental health history and I think at that
21 time knowing that there was some question as to
22 whether or not he was pursuing his therapy as he
23 should be, all of those factors weighed into my
24 decision to consider the TSU.

25 And going back to the beginning of my -- of -- of

1 the answer to your question, looking at the safety of
2 all of the members who were going to be involved in
3 this situation where we tried to arrest him now for
4 the crime that he committed that morning against his
5 family members, I knew that our troopers that are on
6 the road are trained to a certain level; however, if
7 you go into a wooded area and you have access to
8 firearms, our troopers on the road are not trained to
9 go in and find somebody, establish contact with them,
10 and then try to de-escalate the situation. And to try
11 to create the highest likelihood of success in
12 resolving the situation peacefully utilizing the
13 Tactical Services Unit, they are trained at that
14 level, and in addition to that level of training, they
15 also have access to other tools that do not rise to
16 the level of deadly force that they might have an
17 opportunity to employ versus our troopers on the road
18 that would be forced to shoot somebody as soon as they
19 came in contact with them if the -- if the situation
20 warranted it.

21 Q Did Mr. Protzman tell you over the phone that he
22 had known Joseph Fortunati and Joseph Fortunati was a
23 troublemaker?

24 A No.

25 Q Did Mr. Protzman inform you or convey information

1 Q Do you have a copy anywhere of -- of the
2 informational packet?

3 A I think some of the information that was
4 contained in the informational packet is contained on
5 these two maps. I think they were included in that.
6 If they weren't, then I'm mistaken, but other than
7 that, I don't have those informational packets. Those
8 were for people who were participating that day --

9 Q Okay.

10 A -- in various functions in the field.

11 Q You didn't -- you didn't keep like an actual
12 packet that got stored somewhere in a file for -- for
13 purposes of the case?

14 A I didn't, sir. Anything that I have is in that
15 file that you had an opportunity to review earlier.

16 Q Okay. Who spoke at the briefing? And if you
17 need to refer to your notes or something, you -- you
18 may, just let me know what you're referring to, but
19 who spoke at the briefing that you recall?

20 A Where's my other packet? I believe that Sergeant
21 Protzman spoke, I believe that Lieutenant Evans spoke,
22 I believe that Pam Barney spoke, and beyond that, just
23 myself in opening up the briefing.

24 Q Okay. As far as your speaking at the briefing at
25 the Bradford barracks on June 24, what did you offer

1 in terms of your statement? What was opening up the
2 briefing? What -- what substance did you convey to
3 those who were present?

4 A Essentially it was to acknowledge the people that
5 were in the room, that we were going to be performing
6 a mission to go out and attempt to make contact with
7 Mr. Fortunati for the purposes of taking him into
8 custody, and as part of that we had prepared for
9 several hours in the afternoon to try to prepare for
10 contingencies, and as a result of those preparations,
11 we were going to lead into this briefing, and then I
12 turned it over to the individuals that I mentioned to
13 you already for the specific parts that they played in
14 it.

15 Q Okay. And what did Mr. Protzman -- what was his
16 role at this briefing?

17 A He was to outline the specific criminal case that
18 had been generated that morning -- that morning by
19 Robert Fortunati in regards to the assault that
20 occurred against Mr. Fortunati's family members by his
21 son and explained also the events that led up to this
22 event starting off with the initial contact with the
23 folks from the EPA and how the -- describing the --
24 the pattern from the interaction between Fortunati and
25 the EPA up until today so that everybody in the room

1 had the same information.

2 Q Okay. And when Mr. Evans spoke, what was his
3 part?

4 A Essentially he was outlining for the remaining
5 people in the room that he would be the -- the
6 operations manager, if you will, for the TSU members
7 when they were deployed and that he would be following
8 up with a specific briefing of his own people separate
9 and apart from that so that it didn't convolute the
10 overall briefing.

11 Q So did Mr. Evans have on June 24, '06, prior to
12 deployment a separate briefing between him and the TSU
13 members?

14 A I believe he -- he did, yeah.

15 Q And those -- the only people present at the
16 separate briefing as far as you know would be
17 Mr. Evans and the seven other TSU people?

18 A Yes.

19 Q Okay. What did Ms. Barney -- Trooper Barney have
20 to say at the briefing?

21 A I believe that she had been tasked earlier in the
22 day to try to collect some mental health background on
23 Joseph through local channels. I think she worked
24 maybe with Trooper Scott Amado in that process so that
25 we would have as much information as possible prior to

1 A As far as I know they were, yes.

2 Q Okay. Were all seven of the members or -- or at
3 least some of them, I'm going to be questioning each
4 of them so I'm not trying to trick you on the number,
5 were they all wearing camouflage paint on their face
6 or some of them?

7 A I think some of them were. I'm not sure if they
8 all were.

9 Q All right. Was that anybody's decision, you guys
10 are going to dress in camouflage and paint your faces
11 or is that their individual own decisions or is that
12 Mr. Evans' decision?

13 A No. They have issued uniforms that are
14 camouflage uniforms and they're operating in a wooded
15 environment. They're -- the object obviously is to
16 move through that wooded environment to get to an
17 objective, to make contact with that objective and
18 determine how that objective is going to react and
19 contain that objective so that we could introduce some
20 of those other resources that we have on site with
21 that HNU team if it isn't a completely passive
22 response.

23 Q There were two HNU members present, correct?

24 A Yes.

25 Q All right. Was it -- what was discussed about

1 how to utilize the HNU members in this situation? Was
2 it Mr. Evans who suggested the HNU members stay in the
3 van while the TSU members first approached Joseph or
4 was that somebody else's idea?

5 A It's -- it's the most basic level of law
6 enforcement responsibility. You can't put these
7 people who are trained in communications inside an
8 inner perimeter because they're not prepared for that
9 mission. They're not trained for that mission. We
10 get them right up as close as we can comfortably feel
11 that we can get them and keep them safe until we make
12 contact with the individual, contain the individual,
13 and then negotiate, bring the negotiators in and use a
14 variety of different means to do that.

15 Q How would that have worked in this case best-case
16 scenario?

17 A Best-case scenario, the TSU members go through
18 the woods. We hope that Mr. Fortunati is still in
19 fact at the campsite that he was at earlier in the
20 day. They are able to create a perimeter so that he
21 can't get past them and get away and be a problem at
22 the neighboring residence or go down the road, etc.
23 After we are able to make contact with him and we're
24 able to establish a clear perimeter so that we can
25 contain him and control him, then we can introduce the

1 Hostage Negotiation Unit members by various means,
2 whether it be that he's passive and he's standing
3 there and he's not armed and we can approach on foot.
4 We can use a bullhorn. Throw phones. There's --
5 there's a variety of different means that they have
6 available, but you can't get to C until you get to A
7 and B, and A is to locate the individual, B is to
8 contain them to make sure that you're in control of
9 the situation because as long as the individual is
10 mobile, they're more of a threat to anybody else than
11 if we're able to contain them.

12 Q So was the idea to have the seven TSU members
13 form a circle sort of around --

14 A Not necessarily a formal circle but a containment
15 configuration where they felt they could control him
16 if he tried to leave that area, whether they had to
17 physically take him down or whatever they had to do.
18 They've got the bean bag rounds, they've got --
19 they've got the tasers. They've got some -- they've
20 got access to some additional equipment that our road
21 troopers don't have, and if he approaches them and
22 doesn't follow orders, get down, follow instruction,
23 then they have mechanisms -- mechanisms that they can
24 use. Unless he's presenting himself as a deadly
25 threat, they've got some options that our road

1 troopers don't have. So pretty -- you know, again,
2 it's a bad situation. It's probably the worst of bad
3 situations when somebody is mobile in a wooded area
4 because the potential for this thing to move any -- in
5 any direction exists versus somebody inside a house
6 where you can put people in -- you know, on corners
7 and have an eyeball of the entire house. Unless
8 somebody lands with a helicopter, they're not going
9 anywhere. In the woods, however, you've got to, first
10 of all, find the person, which creates its own set of
11 problems and then, second, develop a strategy to get
12 around them so that you can contain them and then work
13 into the negotiation phase, if that becomes necessary,
14 but you can't negotiate if you don't have the
15 resources on scene.

16 Q The HNU members are not also TSU members?

17 A No.

18 Q They have a completely different set of training
19 skills that they've been trained with?

20 A They are highly trained in de-escalation
21 techniques and they work very closely with TSU. In
22 fact, they train together regularly because these
23 situations occur frequently around Vermont.

24 Q I see. If the TSU -- just going on your last
25 explanation. If the TSU had Joseph contained where he

1 couldn't run and they could control him and take him
2 to the ground or anything, then there's at that point
3 no point of having the Hostage Negotiation Unit there,
4 right, because he's already in custody?

5 A Well, it depends on how the situation unfolds.

6 Q I mean, if Joseph was in the middle of a circle
7 and said, okay, guys, please, can I talk to somebody
8 nice, and then you bring up the hostage negotiator,
9 maybe they have a conversation, but how would it be
10 possible under the situation for the hostage
11 negotiators to even be used in the way that this
12 approach was taken?

13 A You couldn't introduce those hostage negotiators
14 to this individual until you contained him and you had
15 some observations of him because you would be marching
16 people right into a situation that are totally
17 unprepared to deal with it. As soon as we contact the
18 individual and as soon as we contain the individual
19 and we can control the individual, those factors need
20 to be in place so that we can then initiate that
21 negotiation process if, in fact, it becomes necessary.
22 If this situation had gone a number of different ways,
23 hands gone up -- state police, state police, the hands
24 go up, there might not be a need for hostage
25 negotiators because the person's totally compliant.

1 This is not going to be a negotiation because the
2 circumstances have changed, but you can't utilize
3 those resources if they're not pre-deployed to the
4 scene.

5 Q Did any one of the leaders, and when I say
6 leaders I mean you, Mr. Evans, Mr. Protzman,
7 Mr. Melendy, let's include Ms. Barney and Mr. Twohig
8 and Bachand, did anybody suggest using the HNU members
9 first?

10 A No.

11 Q Did anybody suggest any other alternatives to the
12 approach of using the TSU members?

13 A We talked about that earlier in the day. That
14 leads into the discussion about do we use TSU to make
15 that contact or do we use regular road troopers, and
16 that's a very easy decision to make given the factors
17 in this case.

18 Q Was there ever any suggestion about enlisting
19 assistance from other Fortunati family members?

20 A No.

21 Q Was there ever any suggestion about inquiring
22 whether Joseph Fortunati had any friends in the area
23 or somebody he had a good dialogue with or could
24 communicate with?

25 A Yeah. It doesn't -- discussions like that occur

1 Q It's true what I'm saying?

2 A Yes.

3 Q There were no -- as part of your briefing and --
4 and information that you had prior to deploying the --
5 the TSU, there were no complaints from any hikers in
6 the area, is that true?

7 A Yes.

8 Q There were no complaints from any people that
9 were driving vehicles along Copper Mine Road, is that
10 true?

11 A Yes.

12 Q Okay. There were no complaints from any
13 landowners in the area concerning Joseph Fortunati,
14 isn't that true?

15 A Yes.

16 Q The area where Joseph's tent and car was located
17 was not a public place, is that true?

18 A It actually was frequented -- frequented
19 regularly. In fact, as we were pulling up with the
20 TSU van a vehicle was coming down the road from that
21 vicinity.

22 Q From -- from Copper Mine Road?

23 A Well, we were on Copper Mine Road and this was a
24 side road off of Copper Mine Road. And we're not
25 clear exactly where, but we believe the vehicle came

1 didn't arrive until after the chief criminal
2 investigator arrived and his team. I know that
3 Lieutenant Evans had contact with Sergeant Flannigan
4 at the scene so he was around all of the commanders at
5 the scene.

6 Q Okay. Looking back on this case, Captain
7 Goodell, do you think it was a mistake to approach the
8 situation the way it was approached with the TSU
9 members?

10 A Absolutely not.

11 Q Under the same circumstances you'd do it again?

12 A Hundred times in a row.

13 Q Was the goal of the operation to find Joseph
14 Fortunati, make contact with Joseph Fortunati, and
15 then de-escalate the situation with Joseph Fortunati?

16 A Those were steps towards eventually arresting
17 him.

18 Q And then four would be take him into custody?

19 A Yes. Ultimately that was our goal.

20 Q Right. I mean, those are my notes on -- on your
21 words earlier, and I just -- I want to be clear that I
22 think you said your -- your testimony was your
23 objective or your goal was to find Joseph Fortunati,
24 make contact with Joseph Fortunati, de-escalate the
25 situation?

1 A Yes.

2 Q Let me just show you the first page -- these
3 documents that I have in front of me, Captain Goodell,
4 as you can see we took from your file that you brought
5 here today and made copies of, right?

6 A Yes.

7 Q This first page doesn't have a date on it that
8 I'm looking at. It starts out with a phone number at
9 top?

10 A Yes.

11 Q 222-5315. It's not dated. When did you make
12 these -- are these your notes?

13 A Yes.

14 Q This is all in your handwriting?

15 A Yes.

16 Q When did you make these notes?

17 A That would have been at the time that I received
18 the call from Sergeant Protzman.

19 Q Okay. So you would have made these notes on June
20 24, '06?

21 A Yes.

22 Q Okay. I notice off and to the right there's a
23 note that says -- well, can you read that note to me
24 there?

25 A Yeah. Combat cross. Acknowledgment of bravery.